The Prohibition of Interracial Marriage in Utah, 1888-1963

BY PATRICK Q. MASON

On a September day in 1898, Dora Harris and her fiancé Quong Wah, a Chinese immigrant and proprietor of a downtown laundry service, entered the county offices in Salt Lake City, seeking a marriage license. The deputy county clerk rejected their request, citing the law passed ten years earlier by the territorial legislature which forbade a white person from marrying anyone of black or Asian descent. The fair-skinned Harris disputed the clerk's decision, asserting that her mother was a "French Creole" and her father was "half Irish and half negro"; if true, this would make her non-white according to virtually any late-nineteenth-century racial definition and, therefore, not subject to the marriage prohibition between whites and Asians. Unconvinced, the clerk concluded that "the Caucasian blood predominated" in Harris, and he refused to issue the license. The couple left empty-handed, promising to pursue the matter in court or to go to Wyoming, "where the law on off-color marriages is less strict than it is in Utah."[1]

This case provides fascinating insights to the social construction of both gender and race in turn-of-the-century Utah. The newspapers record that Harris sought a marriage with Wah because she was sickly and wanted a man to "look after" her, a proposition significantly better than "being thrown upon the world" as an ailing woman. He would bring her into his home and be her provider. Wah simply said "he loved the girl," and wanted her for his wife. According to historian Peggy Pascoe, this phenomenon of people crossing race boundaries to fulfill their ideals of gender relations was not uncommon, particularly in the West.[2] In addition, the intriguing nego-

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[1] *Salt Lake Tribune*, September 16, 1898; *Salt Lake Herald*, September 16, 1898. Details of the incident were also published in other Utah newspapers, such as the *Tooele Transcript Bulletin*, September 23, 1898. No suit filed by Quong Wah or Dora Harris is listed in the Salt Lake City Justice's Court Civil Case Docket Books from September 1898 to December 1899, nor do they appear in the Third District Court Civil Case Index for 1896-1921 (both documents in Utah State Archives, Salt Lake City, Utah). The 1900 census does not have a listing for Harris or Wah in either Utah or Wyoming. In addition, no reference to either person exists in the marriage indexes for either Uinta or Sweetwater County, Wyoming, the two counties closest to Utah, and which, incidentally, possessed large Chinese populations (e-mail correspondence with Carl Hallberg, Reference Archivist, Wyoming State Archives, June 2, 2006). For more information on the Chinese community in Utah, see Michael Lansing, "Race, Space, and Chinese Life in Late-Nineteenth-Century Salt Lake City," *Utah Historical Quarterly* 72 (Summer 2004): 219-38; and Daniel Liestman, "Utah's Chinatowns: The Development and Decline of Extinct Ethnic Enclaves," *Utah Historical Quarterly* 64 (Winter 1996): 70-95.

[2] See Peggy Pascoe, "Race, Gender, and Intercultural Relations: The Case of Interracial Marriage," in *Writing the Range: Race, Class, and Culture in the Women's West*, ed. Elizabeth Jameson and Susan Armitage (Norman: University of Oklahoma Press, 1997), 72.

tiation between Harris and the clerk reveals how racial identities are neither fixed nor biological, but rather exist as tentative, flexible, and provisional realities. The clerk judged the pale shade of Harris's skin to override her claim to mixed racial ancestry, and thus declared her white in the eyes of the state. Harris, who could apparently pass for white and probably was used to doing so, sought to trade the privileges of passing for an opportunity to marry her intended provider. For Wah, marriage to Harris would have fulfilled his emotional needs and represented an opportunity for advancement in social status.

Beyond providing an example of the processes of gender and race construction, Harris and Wah's predicament illuminates the plight of interracial couples who desired to marry in Utah from 1888, when the then-territory's first law banning miscegenation was passed, until 1963, when the statute was repealed.[3] When the 1888 Utah territorial legislature first approved a prohibition on marriage between a "negro" or "Mongolian" and a "white person," it was not doing anything particularly novel.[4] The history of anti-miscegenation legislation in North America traces back to a 1661 Maryland law, and at some point most of the fifty states had some form of such legislation prohibiting or limiting interracial marriage.[5] In fact, on first glance the only thing notable about the 1888 law in Utah was that it came relatively late in the game, lagging some two to three decades behind those of most other western jurisdictions.[6] Upon closer inspection, however, the history of Utah's anti-miscegenation statute emerges as an enlightening chapter in the politics of race and gender in nineteenth- and twentieth-

[3] Miscegenation refers to the mixture of races, and can connote marriage, cohabitation, or sexual relations. This essay will primarily employ its meaning as interracial marriage. While recognizing that "interracial" also includes relationships between members of different non-white groups as well as between whites and non-whites, for the sake of simplicity "interracial marriage" will be used here as shorthand for unions between whites and non-whites, which relationships were of most concern to those drafting anti-miscegenation statutes.

[4] Chapter XLV, "Marriage. An Act Regulating Marriage," Sec. 2, *Laws of the Territory of Utah, Passed at the Twenty-Eighth Session of the Legislative Assembly* (Salt Lake City: Tribune Printing and Publishing Co., 1888), 88. Also in Chapter V, "An Act Regulating Marriage," Sec. 2584, *The Compiled Laws of Utah* (Salt Lake City: Herbert Pembroke, 1888), 2:92.

[5] On the history of interracial sex and/or marriage and anti-miscegenation legislation in the United States, see Alex Lubin, *Romance and Rights: The Politics of Interracial Intimacy, 1945-1954* (Jackson: University of Mississippi Press, 2005); Randall Kennedy, *Interracial Intimacies: Sex, Marriage, Identity, and Adoption* (New York: Pantheon Books, 2003); Kevin R. Johnson and Kristina L. Burrows, "Struck by Lightning? Interracial Intimacy and Racial Justice," *Human Rights Quarterly* 25 (May 2003): 528-62; Rachel F. Moran, *Interracial Intimacy: The Regulation of Race and Romance* (Chicago: University of Chicago Press, 2001); Martha Elizabeth Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven: Yale University Press, 1997); Pascoe, "Race, Gender, and Intercultural Relations"; Joel Williamson, *New People: Miscegenation and Mulattoes in the United States* (Baton Rouge: Louisiana State University Press, 1995); David H. Fowler, *Northern Attitudes towards Interracial Marriage: Legislation and Public Opinion in the Middle Atlantic States of the Old Northwest, 1780-1930* (New York: Garland, 1987).

[6] The earliest anti-miscegenation legislation in the West was passed in California in 1850. Washington followed suit in 1854-55; New Mexico in 1857; Nevada in 1861; Oregon in 1862; Colorado in 1864; Arizona in 1865; Idaho in 1867; and Wyoming in 1869. Among states and territories in the Intermountain and Pacific West, only Montana's statute, passed in 1909, came later than Utah's. See Franklin Johnson, *The Development of State Legislation Concerning the Free Negro* (Ph.D. diss., Columbia University, 1918; reprint, Westport, CT: Greenwood Press, 1979), Part II, 57-207.

century America. In addition, the original bill emerged as part of a larger story of the conflicted interaction of religion and politics in an era when Mormon polygamy became the special target of moral crusading on the territorial and national level. In short, a more detailed analysis of Utah's legislation will help us better understand the complex intersections of race, gender, religion, politics, and law in Utah. It will also suggest broader patterns that can be applied in our studies of the West and the nation, including a greater appreciation for how race relations in general and debates over interracial marriage in particular went beyond the standard black-white dichotomy to include such groups as Chinese immigrants and Native Americans.

Territorial law had long prohibited sex between black and white Utahns. In 1852, "An Act in Relation to Service" was passed outlawing "sexual intercourse" between "any white person" and "any of the African race."[7] However, marriage between the races remained technically legal until 1888. Historian Nancy Cott argues that in the last third of the nineteenth century, the nation became increasingly involved in defining the state's role and interest in marriage, even to the point of "obsession."[8] A succession of decisions in the U.S. Supreme Court declared the regulation of marriage to be perfectly within the sphere of governmental authority, and upheld laws which shaped a specific model of monogamous, intra-racial wedlock. In the polygamy test case of *Reynolds v. U.S.* (1879), the Court declared that laws regulating marriage were "within the legitimate scope of the power of every civil government." In *Maynard v. Hill* (1888), Justice Stephen Field reaffirmed the legislative and judicial right to enact and enforce laws restricting miscegenation by stating that "marriage, . . . having more to do

[7] *Acts, Resolutions, and Memorials, Passed by the First Annual, and Special Sessions, of the Legislative Assembly, of the Territory of Utah* (Great Salt Lake City, UT: Brigham H. Young, 1852), 80-81. This was the first statute limiting interracial sex in Utah, as the Ordinances of the High Council (1847) and State of Deseret Constitution (1849) did not mention race in their ordinances regulating sexual behavior. The act, which more broadly legalized slavery in the territory, seems to have been a direct result of addresses to the legislature by Brigham Young on January 23 and February 5, 1852. The bill was first read in the Territorial Council on January 27, passed a first reading on February 2, and was approved in joint session with the House of Representatives on February 23. See *Journals of the House of Representatives, Council, and Joint Sessions of the First Annual and Special Sessions of the Legislative Assembly of the Territory of Utah* (Great Salt Lake City, UT: Brigham H. Young, 1852), 90, 122; "An Act in Relation to Service," in Territorial Legislative Records, 1851-1894, Utah State Archives, Series 3150, Box 1, Folder 55; D. Michael Quinn, *The Mormon Hierarchy: Extensions of Power* (Salt Lake City: Signature Books, in association with Smith Research Associates, 1997), 749-50; *Wilford Woodruff's Journal, 1833-1898: Typescript*, ed. by Scott G. Kenney, 9 vols. (Midvale, UT: Signature Books, 1983-1985), 4:97-99.

Some evidence suggests that the 1846 marriage to a white woman in Massachusetts by African American Mormon Enoch Lovejoy Lewis, whose father, Walker Lewis, was one of the few blacks ordained to the LDS priesthood in the early 1840s, helped propel Brigham Young toward instituting the priesthood ban on all blacks. See Connell O'Donovan, "The Mormon Priesthood Ban and Elder Q. Walker Lewis: 'An Example for His More Whiter Brethren to Follow,'" *John Whitmer Historical Association Journal* 26 (2006): 48-100.

[8] Nancy F. Cott, "Giving Character to Our Whole Civil Polity: Marriage and the Public Order in the Late Nineteenth Century," in *U.S. History as Women's History: New Feminist Essays*, ed. Linda K. Kerber, Alice Kessler-Harris, and Kathryn Kish Sklar (Chapel Hill: University of North Carolina Press, 1995), 114.

with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature." Finally, in the 1896 ruling in *Plessy v. Ferguson*, most famous for establishing the "separate but equal" doctrine that legitimized Jim Crow laws, the Court affirmed that prohibitions against interracial marriage were "universally recognized as within the police power of the State."[9] Polygamy and interracial marriage were thus dually outlawed and prosecuted in an attempt to maintain the moral and racial purity of Anglo-Protestant America.

By the 1880s the "Mormon Question," centering on the twin evils of plural marriage and theocratic politics, had become a subject of intense debate in parlors, newspapers, sermons, and public rallies across the country. The furor resonated in the halls of Congress, and laws passed in 1882 and 1887, following up mostly ineffectual legislation from the previous two decades, finally sought to stamp out Mormon polygamy and theocracy, and even wipe out the very institutions of a recalcitrant Mormonism if need be.[10] By turning its eye westward to Utah, the federal government—and northern public opinion more generally—was at least tacitly acknowledging that its primary interest no longer lay in chastising a defeated South. Although it was a complicated process, one of the underlying realities that expedited the reunion of white North and white South was a pervasive antipathy toward non-whites, particularly blacks and Asians. The "unfinished revolution" of a largely failed Reconstruction, with its attendant abandonment of the pressing needs of the freed people, was only the first and most obvious casualty of this racism. Late nineteenth-century racial antipathies also manifested themselves in particularly virulent forms of xenophobic nativism, Anglo-Saxon triumphalism, and American imperialism. Popular attitudes translated into law in a series of federal acts excluding Chinese immigrants in the 1880s and in the development of Jim Crow laws throughout the South and much of the Midwest and urban North.[11]

Another important factor in the historical context for Utah's 1888 antimiscegenation statute was demographics. Randall Kennedy demonstrates that "*Every* state whose black population reached or exceeded 5 percent of the total eventually drafted and enacted antimiscegenation laws," as a signif-

[9] *Reynolds v. United States*, 98 U.S. 145 (1879); *Maynard v. Hill*, 125 U.S. 90 (1888); *Plessy v. Ferguson*, 163 U.S. 537 (1896).

[10] See Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2002).

[11] See Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill: University of North Carolina Press, 2003); David W. Blight, *Race and Reunion: The Civil War in American Memory* (Cambridge: The Belknap Press of Harvard University Press, 2001); Andrew Gyory, *Closing the Gate: Race, Politics, and the Chinese Exclusion Act* (Chapel Hill: University of North Carolina Press, 1998); Nina Silber, *The Romance of Reunion: Northerners and the South, 1865-1900* (Chapel Hill: University of North Carolina Press, 1993); Eric Foner, *Reconstruction, 1863-1877: America's Unfinished Revolution* (New York: Harper & Row, 1988); John Higham, *Strangers in the Land: Patterns of American Nativism, 1860-1925* (New Brunswick, NJ: Rutgers University Press, 1988 [1955]); C. Vann Woodward, *The Strange Career of Jim Crow*, 3rd rev. ed. (New York: Oxford University Press, 1974).

icant presence of non-whites almost universally exacerbated white fears of race-mixing.[12] But Utah did not come close to reaching the 5 percent mark, with the entire non-white population of Utah comprising only 2.3 percent of the total in 1890; blacks represented a minuscule 0.3 percent of the territory's populace, with Chinese only slightly higher at 0.4 percent.[13] Given such a tiny non-white population, why did Utah even bother with a law specifically prohibiting interracial marriage, and why did the law take the form it did?

To answer these questions, we must assess Utah's racial climate and the specific political environment in which the 1888 bill was drafted and then passed. Racial beliefs among Americans in the late nineteenth century were complex and often contradictory, but they generally included a certainty about the superiority of whites (specifically, Anglo-Saxons, Caucasians, or northern Europeans) over all non-white groups, particularly those of African or Asian descent. There was also a widespread and often intense antipathy toward genuine social equality with the "lesser" races, most virulently expressed as fears of interracial marriage and sex.[14]

Utah's newspapers reflected this public aversion to race-mixing with their reporting, usually in negative tones, of numerous instances of miscegenation in the years leading up to the 1888 bill. Because Utah's own population of racial minorities was so small, the papers were forced to relate cases of miscegenation from distant settings. These stories, from places as far away as Louisiana, New York, and even Portugal, gave readers a sense that the issue of miscegenation was present and pressing. Imported from

[12] Kennedy, *Interracial Intimacies*, 219.

[13] Out of 210,779 total people in Utah in 1890, there were 588 blacks, 806 Chinese, 608 "civilized Indians," 3,456 total Indians (including those on reservations), and only four Japanese. Statistics compiled from *Compendium of the Eleventh Census: 1890* (Washington, D.C.: Government Printing Office, 1896), 511, 523, 527, 537; *Fifteenth Census of the United States: 1930* (Washington, D.C.: Government Printing Office, 1933), 2:57; and Campbell Gibson and Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990*, Population Division, U.S. Census Bureau, Working Paper Series No. 56 (September 2002), Table 59, available online at www.census.gov/population/www/documentation/twps0056.html (accessed June 26, 2006).

Readers today will wonder about the presence of Hispanics in 1888 Utah, but throughout the nineteenth century and most of the twentieth, Hispanics were considered white for census purposes, making it difficult to assess their total numbers. In any case, significant Mexican American immigration to Utah did not begin until the twentieth century. For a brief history of Hispanics' (especially Mexican Americans') contested racial identity, see Neil Foley, "'Partly Colored' or 'Other White': Mexican Americans and Their Problem with the Color Line," in *Beyond Black and White: Race, Ethnicity, and Gender in the US South and Southwest*, ed. Stephanie Cole and Alison M. Parker (College Station: Texas A&M University Press, 2003), 123-44. On Hispanics in Utah, see Jorge Iber, *Hispanics in the Mormon Zion, 1912-1999* (College Station: Texas A&M University Press, 2002); and Vicente V. Mayer Jr., *Utah: A Hispanic History* (Salt Lake City: American West Center, University of Utah, 1975).

[14] For a concise overview of American racial views in the nineteenth and early twentieth centuries, see George M. Fredrickson, *Racism: A Short History* (Princeton: Princeton University Press, 2002), chap. 2; also Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Race* (Cambridge: Harvard University Press, 1998). On white fears about miscegenation, see Williamson, *New People*, esp. chap. 2. On racial views among Latter-day Saints, who formed the majority in late nineteenth-century Utah, see Armand L. Mauss, *All Abraham's Children: Changing Mormon Conceptions of Race and Lineage* (Urbana: University of Illinois Press, 2003).

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George and Lucinda Vilate Flake Stevens. George Stevens, whose mother was Spanish, was born in 1839 in Lorad, Mexico, and came to Utah in 1860. In 1872 he married Lucinda Vilate Flake, a daughter of Green and Martha Crosby Flake who was born in Union on December 2, 1854.

remote locations, such articles brought the specter of race-mixing into the sheltered homes of white Utahns, collapsing the geographical, demographic, and cultural distances that belied the differences between Utah and those other locales.[15]

Not all of the stories, however, took place thousands of miles away. In November 1878, in a ceremony officiated by a minister from an unnamed congregation, a "full blooded Negro" married "a white haired Scandinavian girl" in Salt Lake City. (Later sources stated the woman was English, not Scandinavian; one way or the other she was of northern European origin and fair-complexioned.) The *Salt Lake Tribune* commented that the "alliance" was "shocking to the sense of decent people." The proudly anti-Mormon newspaper further editorialized that despite the undesirability of the union, "in Zion there is no law against it, nor for that matter, against a colored man marrying half a dozen white women." The anonymous author of the short article undoubtedly reflected majority white opinion in condemning the interracial marriage, but also used the occasion to include a less than subtle dig at the other alternative form of marriage more commonly practiced in the territory. The article concluded with a dire prediction that reflected popular nineteenth-century racial views, that if such cases of miscegenation were to

[15] A sample of these stories about miscegenation in faraway places in the years leading up to the 1888 bill includes: *Daily Corinne Reporter*, February 3, 1872 (reporting a case in Massachusetts); *Salt Lake Daily Tribune*, May 14, 1879 (Virginia); *Deseret News* August 16, 1882 (Michigan); *Salt Lake Daily Tribune*, October 3, 1884 (New York); *Ogden Standard Examiner*, October 23, 1887 (Portugal).

continue unabated, "man would degenerate into a billy goat in a few generations, and he would be ringed, streaked, speckled and spotted."[16]

Two letters to the editor responding to the episode followed in the next day's issue. The author of the first letter, clearly a non-Mormon, did not countenance interracial marriage, but said he could hardly blame the girl, when the alternative in Utah was all too often polygamy: "Is it at all surprising that when she sees her own countrymen, distinguished leaders in Zion, at the head of the Church, doing that which is contrary to all law and decency, she should get 'a little off' herself?" The second letter accepted the marriage as mutually consensual, lawful, and "solemnized by a respected clergyman." The author laid the blame for race-mixing not at the feet of Mormon marriage practices that opened the door for interracial unions, but on whites in the slave South who first "commenced the act of miscegenation in this country."[17] While the various authors pointed fingers in multiple directions, there was a general consensus that the interracial marriage, while technically legal under territorial law in 1878, was at the very least unfortunate.

Although Mormons and non-Mormons could not agree on much in the territory's highly charged religious and political environment, both groups shared a disdain for miscegenation, as reflected in their respective newspapers. The *Salt Lake Tribune*'s editorializing on racial degradation has already been noted. Furthermore, the non-Mormon *Ogden Standard Examiner* sarcastically observed that for all their talk of equality, "nigger-worshipers" and "social equality preachers" ultimately rejected mixed-race couples.[18] A later article in the same newspaper provided a dim commentary on some of Frederick Douglass's recent comments on the future of African Americans—it referred to the "commingling of white and black" as "horrible," rejected the practice of "monstrous miscegenation," and asserted as a fact the intellectual inferiority of "the mulatto."[19]

Latter-day Saints, the majority population in Utah, similarly weighed in on race-mixing as both a spiritual and social evil. In an 1863 address in the Salt Lake Tabernacle, Brigham Young emphatically declared, "Shall I tell you the law of God in regard to the African race? If the white man who belongs to the chosen seed mixes his blood with the seed of Cain, the penalty, under the law of God, is death on the spot."[20] In his account of the trial of the murderers of Joseph Standing, an LDS missionary killed by a mob in northern Georgia in July 1879, Southern States Mission president John Morgan commented on the "variegated colors, all the way from coal black to nearly pure Anglo-Saxon," that were represented in the jury box.

[16] *Salt Lake Daily Tribune*, November 26, 1878.
[17] Ibid., November 27, 1878.
[18] *Ogden Standard Examiner*, May 21, 1883.
[19] Ibid., September 25, 1887.
[20] Brigham Young, "The Persecutions of the Saints," in Brigham Young, et al., *Journal of Discourses*, 26 vols. (London: Latter-day Saints' Book Depot, 1854-1886), 10:110.

He opined that justice could hardly be expected among a population that so vividly "testified of the practical workings of the principle of miscegenation."[21] Morgan's equation of moral failings with racial impurity is telling. In his mind, the offspring of mixed-race relationships was inherently lacking in both moral and intellectual faculties, a view common to nineteenth-century racial thought. This assessment of the low quality of southern racial composition was echoed a few years later in a report by a Mormon elder in West Virginia. In an often harshly worded letter, the missionary lamented the "damning influence" that "inter-marriage with the colored race" had caused throughout the South, spreading the "curse of Cain" among its inhabitants. He referred to the "dreadful effects" and "moral degradation" that ensued in the wake of such widespread race-mixing, and proposed that "Nothing short of a judgment equal to the Deluge can now arrest the contaminating progress of this cancer of the soul."[22]

The rhetorical strategy employed in these two letters was characteristic of the general pattern of Mormon apologists in the 1880s. They typically sought to defend their own peculiar marriage system both by extolling its virtues and by attacking the sexual vices of all others, whether it was miscegenation in the South or prostitution in the urban Northeast. For instance, church president John Taylor protested the 1882 Edmunds Act by pointing out the sexual infelicities "in Washington, where miscegenation has prevailed to so great an extent" and adultery was common practice among "three fourths of the members of Congress."[23] Responding to a nation that portrayed polygamous Mormons as the most deluded and degraded of all people, Latter-day Saints counterattacked by highlighting the moral depravity of their critics. Mormons' strong disavowal of miscegenation certainly reflected trends in late-nineteenth-century LDS theology and culture, but it also represented a political tactic calculated to deflect attention and criticism at the high point of the national anti-polygamy crusade.

In the years before miscegenation was outlawed, race-mixing was discouraged in Utah as a social taboo by Mormons and non-Mormons alike. When that taboo was violated, Utahns often resorted to public shaming and even vigilante violence. In late 1884, a white soldier stationed at Fort Douglas just outside Salt Lake City married an African American prostitute. One report tried to protect the soldier by saying that he was "grossly under the influence of strong drink at the time and therefore not in his right senses," but the Methodist clergyman who performed the wedding said he did not detect that the soldier was "under the influence of

[21] *Deseret News*, November 5, 1879. As Morgan predicted, all of the accused in Standing's death were found not guilty, despite overwhelming evidence to the contrary.

[22] Ibid., November 18, 1885.

[23] John Taylor, "The Mighty Mission of the Saints," *Journal of Discourses*, 23:265-66. Also see Davis Bitton, "Polygamy Defended: One Side of a Nineteenth-Century Polemic," in *The Ritualization of Mormon History and Other Essays* (Urbana: University of Illinois Press, 1994), 34-53; and Gordon, *Mormon Question*, 98-99.

liquor to any extent." The scandal provoked a torrent of public castigation, and the newspapers dubbed the incident "An Unsavory Affair." The unnamed soldier's "disgraced" regiment was reported to "look upon the affair not only with regret but disgust." The minister, claiming that at the time he had taken the soldier's "dark complexion" as a sign that he was in fact "a colored man," admitted to being deeply embarrassed by the episode and vowed never to repeat such a mistake. The *Deseret News* concluded that it was an honest and unintentional lapse on the minister's part, but it gave no excuse for the "ill conduct" of the soldier.[24] In a more dramatic scene several years earlier, in December 1866, a black Utahn named Thomas Colbourn was lynched, his throat sliced and a note pinned to his chest reading, "Notice To All Niggers! Warning!! Leave White Women Alone!!!" Although allegations that Colbourn was sexually involved with several white women were never substantiated, the incident powerfully illustrated the grim fact that in Utah, as in other parts of the country, even the hint of interracial sexual relations could be used as provocation or justification for a lynching.[25]

By 1888, public opinion in Utah, among both Mormons and non-Mormons, clearly stood opposed to interracial marriage, particularly between whites and blacks or Asians. On March 8, the territorial legislature passed "An Act Regulating Marriage," which "prohibited and declared void" marriage between "a negro and a white person" and between "a mongolian and a white person," although mixed marriages performed outside the territory were honored in Utah. In light of the widespread antipathy toward race-mixing, the passage of the bill is not particularly extraordinary. Utah's anti-miscegenation statute was not a freestanding piece of legislation, however, but rather part of a more expansive code regulating acceptable marriage practice and procedure. The law also prohibited polygamy, incest, marriage to "an idiot or lunatic," and underage unions.[26]

[24] *Deseret News*, December 3, 1884.

[25] Story recounted in Harold Schindler, *Orrin Porter Rockwell: Man of God, Son of Thunder* (Salt Lake City: University of Utah Press, 1966), 345-46. Colbourn had been in trouble with the law previously, having been convicted of manslaughter in 1859 and sentenced to one year at hard labor at the territorial penitentiary. See *(Salt Lake) Valley Tan*, September 21, 1859. A sample of key works dealing with sexuality and lynching include Crystal Nicole Feimster, "'Ladies and Lynching': The Gendered Discourse of Mob Violence in the New South, 1880-1930" (Ph.D. diss., Princeton University, 2000); Ida B. Wells-Barnett, *Southern Horrors and Other Writings: The Anti-Lynching Campaign of Ida B. Wells, 1892-1900*, ed. with an introduction by Jacqueline Jones Royster (Boston: Bedford Books, 1997); Stewart E. Tolnay and E. M. Beck, *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930* (Urbana: University of Illinois Press, 1995); Jacquelyn Dowd Hall, *Revolt Against Chivalry: Jessie Daniel Ames and the Women's Campaign Against Lynching*, rev. ed. (New York: Columbia University Press, 1993); Joel Williamson, *The Crucible of Race: Black/White Relations in the American South since Emancipation* (New York: Oxford University Press, 1984).

[26] "An Act Regulating Marriage," *Laws of the Territory of Utah*, sec. 1, 2, 5; also see *Compiled Laws of Utah*, sec. 2583, 2584, 2587. The act is quite long, but the most relevant sections are as follows:

"Section 1. *Be it enacted by the Governor and Legislative Assembly of the Territory of Utah:* That marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half as well as the whole blood, and between uncles and nieces or aunts and nephews, or between any persons related to each other within and not including the fourth degree of consanguinity, computed according to the rules of civil law, are incestuous and void from the beginning, whether the relationship is

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This photograph of the Chinn Chong family was taken sometime before 1911 at 49 Commercial Street in Salt Lake City.

The unique content and legislative history of the bill bears more thorough consideration.

The 1888 marriage law was the work of the first territorial legislature to meet following the enactment of the Edmunds-Tucker Act (1887), which had finally put teeth into federal anti-polygamy legislation by declaring plural marriage a felony, disenfranchising polygamists, and barring those who practiced or believed in plural marriage from jury duty or holding public office.[27] This radically

legitimate or illegitimate.

"Sec. 2. Marriage is prohibited and declared void:

"1. With an idiot or lunatic.

"2. When there is a husband or wife living from whom the person marrying has not been divorced.

"3. When not solemnized by an authorized person, except as provided in section 7 of this act.

"4. When at the time of marriage the male is under fourteen, or the female is under twelve years of age.

"5. Between a negro and a white person.

"6. Between a mongolian and a white person.

"Sec. 5. Marriages solemnized in any other country, State or Territory, if valid when solemnized, are valid here."

[27] For a concise history of the anti-polygamy movement, see Leonard J. Arrington and Davis Bitton, *The Mormon Experience: A History of the Latter-day Saints*, 2nd ed. (Urbana: University of Illinois Press, 1992), 178-84. The most thorough and insightful treatment, particularly in the form of the legal conflict, is Gordon, *The Mormon Question*.

changed the face of Utah politics, and when the new territorial legislature came into session, it was filled with non-Mormon legislators who took the seats of polygamists displaced by Edmunds-Tucker.[28] The new legislators were eager both to punish their long-time local antagonists and to please their anti-polygamist allies throughout the nation. They sought to strengthen the government's institutional control over marriage by enacting injunctions against undesirable forms, targeting plural marriage in particular, and imposing more stringent regulations on how marriages could be performed.

The legislative session began with a speech by Governor Caleb West railing against the Mormon institutions of theocracy and polygamy, and enjoining the new legislature to pass marriage laws that would be in harmony with Edmunds-Tucker.[29] Legislators took his call to heart. The House of Representatives and Territorial Council passed a joint resolution supporting the "just, humane and impartial enforcement" of federal anti-polygamy legislation.[30] In addition, three separate bills regarding marriage were proposed, one for the punishment of polygamy, another on divorce, and finally the broad "Act Regulating Marriage." The first two were rejected in committee, based in part on the fact that Congress had already legislated "fully and in detail upon the questions involved," and that further legislation on the territorial level would not only be unnecessary but presumptuous.[31] The "Act Regulating Marriage," proposed in the House by Representative E. D. Hoge of Salt Lake City, a former probate and district court judge who in 1888 was a prominent member of the Liberal Party, was the only one of the trio to be passed and signed, but not before significant debate and amendment.[32]

The original draft of the marriage bill had no provision outlawing miscegenation. As first drawn up by Hoge, the bill barred marriage in various circumstances, but there was no mention of racial restrictions.[33] It was not

[28] See Gustive O. Larson, *The "Americanization" of Utah for Statehood* (San Marino: The Huntington Library, 1971), 221.

[29] Address by Gov. Caleb W. West to Joint Session of Utah Territorial Legislature, January 9, 1888, in *Council Journal of the Twenty-Eighth Session of the Legislative Assembly of the Territory of Utah* (Salt Lake City: Tribune Printing and Publishing Co., 1888), 23-29.

[30] H.C.R. 21, adopted March 2, 1888; see *House Journal of the Twenty-Eighth Session of the Legislative Assembly of the Territory of Utah* (Salt Lake City: Tribune Printing and Publishing Co., 1888), 134-35, 224-25.

[31] Ibid., 132. Newspaper reports on the introduction of the anti-polygamy and divorce bills include *(Provo) Utah Enquirer*, January 17, 1888; and *Deseret News*, January 25, 1888.

[32] E. D. Hoge was active in Utah's political and legal system throughout the 1870s and 1880s, and as an active Liberal Party member was frequently critical of the LDS church. See *Deseret News*, February 15, 1888. He was a defendant in the Supreme Court case *Murphy v. Ramsey*, 114 U.S. 15 (1885), concerning the registration of voters under the Edmunds Act. In May 1890 Hoge's wife Lucille testified in an unlawful cohabitation case against Joseph E. Taylor, who had taken her sister Lisadore as a plural wife in 1876. *Deseret Weekly*, May 31, 1890.

[33] The original draft is printed in *Utah Enquirer*, January 17, 1888. That racial restrictions were added later is also suggested by examining the working bill for H.F. No. 6, "A Bill for An Act Regulating Marriage," in Territorial Legislative Records, Box 13, Folder 54; clauses 5 and 6 of Section 2 were clearly added after the rest of the section had been written.

until the bill came back from the judiciary committee that an amendment "to prohibit miscegenation," along with several other changes, was written into the text and then adopted by the House.[34] The marriage bill sparked prolonged and heated debate over the various sections relating to polygamy, but the clauses proscribing marriage with a "negro" or "Mongolian" seem to have not provoked discussion after their inclusion.[35] The bill passed with strong support in both the House and Council, and it was signed by Governor West on March 8, becoming law immediately. When Utah achieved statehood in 1896, the statute was adopted as part of the state code.[36]

Despite the relative paucity of extant historical records detailing the precise nature of the deliberations surrounding the bill, it seems clear that a number of factors influenced both the language and the passage of the new marriage law. First, the members of the incoming legislature, made up largely of staunch opponents of polygamy, were eager to pass territorial legislation paralleling national laws that outlawed plural marriage. Indeed, one printed version of the 1888 marriage act is entitled *Mormon Legislation Against Polygamy*, revealing the intent, if not necessarily the authorship, behind the "Act Regulating Marriage."[37] Besides harboring genuine repulsion toward plural marriage and a certain vindictiveness toward the deposed Mormon majority, the new territorial government also sought legitimacy in its quest for statehood. Utah sent its sixth formal request for statehood to Congress in 1888.[38] While the petition eventually failed, it would have been only natural for the territory's lawmakers to try to appear as credible as possible in the nation's anti-polygamist eyes, and the marriage law was one way of accomplishing this.

The confluence of anti-polygamy and anti-miscegenation legislation thus came as the new territorial legislature drafted bills targeting plural marriage and then extended the law by adding language prohibiting all "unacceptable" forms of marriage. In this way, especially since the miscegenation clauses were added later as amendments, it seems that interracial marriage was not specifically targeted as it was in other states, but was collateral damage in the territory's attempt to regulate marriage practices, all inspired by the nationwide anti-polygamy movement. Utah's anti-

[34] *Deseret News*, February 15, 1888. No records of the internal workings of legislative committees of that era are available.

[35] See Ibid.; *(Provo) Utah Enquirer*, February 17, 1888; *Deseret News*, February 22, 1888. There are no transcripts of actual floor debates, so newspaper records are all that survive, and none mention any discussion of the miscegenation clauses after they were added to the original bill.

[36] *Revised Statutes of Utah* (1898), Title 29, Chapter 1, "Marriage," pp. 329-31. The final vote on the marriage act was 16-5 (2 absent) in the House, and 8-1 (2 absent) in the Council. Voting totals recorded on working bill and in *House Journal* (1888), 251.

[37] *Mormon Legislation Against Polygamy*, March 2, 1888, Americana Collection, L. Tom Perry Special Collections Library, Harold B. Lee Library, Brigham Young University, Provo. The pamphlet includes a reprint of both the marriage law (see note 26) and the joint resolution "Endorsing Congressional Anti-Polygamy Laws."

[38] See Larson, *"Americanization" of Utah*, 222.

miscegenation legislation was not simply a product of racism, although ideas about race and gender certainly dictated that miscegenation was an obnoxious offense in the minds of most white Utahns. Instead, the ban on interracial marriage emerged from a complex interaction of race, religion, culture, and local and national politics.

Racial antipathies do not in themselves explain the law, but race relations did help shape its provisions. Given the contemporary racial climate, it is not surprising that the 1888 law outlawed whites from marrying African Americans or "Mongolians"; indeed, that same year federal legislation regarding Chinese exclusion (originally passed six years earlier) was expanded.[39] One of the intriguing features of Utah's 1888 marriage bill, however, was its tacit approval, via the absence of any restrictions, of unions between whites and Native Americans. The various local Indian tribes together constituted by far the largest racial minority in the territory (although blacks outnumbered "civilized Indians" on the census records). If Anglo-European racial purity was of paramount concern, it seems odd that interracial marriages with "savages" were not prohibited along with other non-white groups. Furthermore, bordering states and territories including Arizona, Idaho, and Nevada all proscribed intermarriage between whites and Indians, so a regional precedent existed.[40] Holes in the historical record, particularly regarding legislative intent, force us to speculate somewhat, but three explanations are worth considering for Utah's relatively liberal policy toward white-Indian intermarriage: first, the "reality on the ground" that by the 1880s most Utah Indians were effectively removed from areas of white settlement; second, the distinctiveness of LDS theology and particularly the practical implementation of Brigham Young's Indian policies; and third, broader patterns of relative tolerance among many Westerners toward limited Indian-white race mixing.

Utah was no different from the rest of the nation in that white settlement meant Indian displacement. Particularly in the harsh climate of the Great Basin, the scarcity of resources and good land dictated that whites and Indians would be in competition with one another. As happened elsewhere, eventually white settlers prevailed and Indians were forced out. By the 1880s, only a few scattered bands of Indians remained outside reservations, and the Indian "threat" was seen as largely contained. Thus, the legislators who omitted Indians when drafting the anti-miscegenation clause of the 1888 marriage bill may have simply considered white-Indian interaction as non-existent or almost entirely inconsequential from a pragmatic perspective.

With Mormons dominating the territory's politics and culture for so much of Utah's formative years, their religious beliefs inevitably affected

[39] The 1888 federal law essentially built on the 1882 Chinese Exclusion Act, barring all but "Chinese officials, teachers, students, tourists, and merchants." On the history of Chinese exclusion laws, see Lee, *At America's Gates*; Gyory, *Closing the Gate*; and Lucy E. Sayler, *Laws Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill: University of North Carolina Press, 1995).

[40] See Johnson, *Development of State Legislation*.

social realities which then became reflected in policy. Latter-day Saints believed that Native Americans were descendents of a branch of the house of Israel (called "Lamanites" in *The Book of Mormon*) who would eventually play a central role in the sacred history culminating in Jesus Christ's millennial return. Mormon theology thereby encouraged—in an ideal sense—a relatively high degree of racial tolerance toward Indian peoples, especially when compared with predominant attitudes on the American frontier. As territorial governor and LDS church president, Brigham Young carried out a largely benevolent, if paternalistic and strategic, relationship with Utah's natives. Historians' assessments of the nature of Mormon-Indian relations have varied widely, but in a recent article Sondra Jones persuasively argued that the weight of contemporary scholarship demonstrates that "despite the intermittent (and occasionally bloody) conflict, an extraordinarily benign, symbiotic relationship *did* exist during the first years of Mormon-Indian contact," and that "while spattered with injustice and abuse, the pattern of Mormon-Indian relations still differed to a *significant* degree from Indian relations elsewhere on the American frontiers, particularly during the first fifteen years of Mormon settlement."[41] Young even instituted and promoted a limited program of intermarriage between LDS missionaries and Indian women, with the intention of "saving" the Native Americans and engendering friendly relations between tribes and the outlying Mormon settlements. Sporadic outbreaks of violence and racist attitudes held by Mormons on the grassroots level curbed the appeal and effectiveness of the intermarriage program, but by 1870 nearly three dozen Mormon men had taken Indian wives, largely in southern Utah and Nevada.[42]

Of course, when drafting the 1888 marriage bill the mostly non-Mormon legislators would not have felt any particular commitment or acted with fidelity to Latter-day Saint theology regarding the "Lamanites." They may have been aware, however, that they were following precedents set by other western states' legislation on the matter. Whereas prohibitions on whites marrying African Americans were universal throughout the Far West, with bans on marrying Asians following not far behind, intermarriage policy toward Native Americans was spottier, with only half of the states and territories in the Intermountain and Pacific West including Indians in their miscegenation statutes.[43] The laws that did

[41] Sondra Jones, "Saints or Sinners? The Evolving Perceptions of Mormon-Indian Relations in Utah Historiography," *Utah Historical Quarterly* 72 (Winter 2004): 34-36; emphasis in original.

[42] See Richard D. Kitchen, "Interracial Marriages Between LDS Missionaries and Native Americans, 1853-1877" (M.A. thesis, Brigham Young University, 1996); and Mauss, *All Abraham's Children*, esp. chap. 2. Encapsulating his thought on the matter, Young taught Mormons that in their relations with the Indians, "We are their saviours." See "Discourse by Brigham Young, Proper Treatment of the Indians, etc," *Journal of Discourses*, 6:328. For an example of how popular Mormon attitudes had departed from Young's ideal some three decades after his death, see Susa Young Gates, "The Courtship of Kanosh: A Pioneer Indian Love Story," *Improvement Era* 9 (November 1905): 24.

[43] Arizona, Idaho, Nevada, Oregon, and Washington had restrictions on whites marrying Native Americans at some point; California, Colorado, Montana, New Mexico, and Wyoming did not.

exclude Native Americans can often be traced to the public's prejudice against individual tribes in local situations, such as white Arizonans' antipathy toward Apaches as a result of the ongoing wars designed to force the tribe onto reservations.[44] Laws that allowed for (or at least ignored) Indian-white intermarriage can be explained in part by the so-called "Pocahontas rule," in which Indian "princesses" made for acceptable wives for white men; while by no means universally accepted, and generally not extended toward Indian males marrying white women, it was a cultural myth prevalent among many nineteenth-century whites.[45] Even more concretely, the very nature of frontier settlement meant that most western states and territories had many prominent practitioners and descendents of intermarriage between Indians and whites, including trappers, traders, and (mostly Protestant) missionaries.[46] It is, therefore, plausible that the Utah legislature did not include a clause prohibiting white-Indian miscegenation based on the territory's history of paternalist relations and even intermarriage, and in so doing the Utah statute followed suit not just with Brigham Young's policy but with several other western states as well.

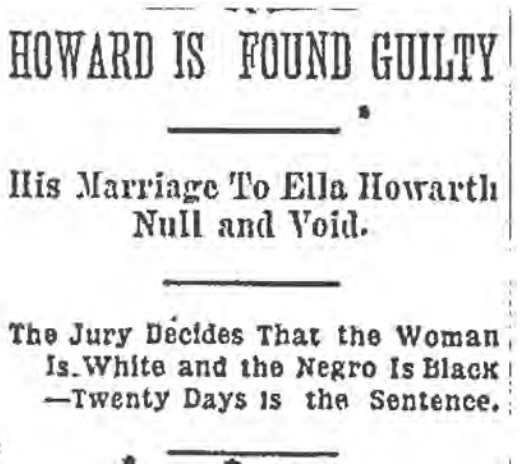
The combination of law and social taboo proved effective in disciplining those who transgressed accepted racial boundaries in the years following the 1888 statute. Not just interracial marriage, but race-mixing in general was viewed with suspicion and often punished in Utah. In 1889, "a lady missionary" tipped off authorities that a "white woman and a Mongolian" were living together in Logan, along with the woman's seven-year old daughter. When state authorities investigated, they described the conditions as "crowded" and "filthy," and promptly removed the child from the home, as well as another sixteen-year-old daughter who was living separately with another "Chinaman." The mother protested, saying that she and her husband had been legally married by a judge in Idaho before coming to Utah. The legality of their marriage failed to counter negative public sentiment, however, as the *Utah Journal*, in a front-page story, called the case

[44] See Roger D. Hardaway, "Unlawful Love: A History of Arizona's Miscegenation Law," *Journal of Arizona History* 27 (Winter 1986): 378. The situation in Arizona is ironic considering that many "white" Arizonans had at least some Indian ancestry based on centuries of contact between Europeans and native tribes in the Southwest.

[45] See Robert S. Tilton, *Pocahontas: The Evolution of an American Narrative* (New York: Cambridge University Press, 1994).

[46] See David D. Smits, "'Squaw Men,' 'Half-Breeds,' and Amalgamators: Late Nineteenth-Century Anglo-American Attitudes Toward Indian-White Race-Mixing," *American Indian Culture and Research Journal* Vol. 15, No. 3 (1991): 46, 56. On early relations between European trappers and explorers and Indian women in the West, see Margaret D. Jacobs, "The Eastmans and the Luhans: Interracial Marriage between White Women and Native American Men, 1875-1935," *Frontiers: A Journal of Women's Studies* 23, 3 (2002): 29-54; Mark Alan Sigmon, "Heretics of Race: An Exploration of Indian-White Relationships in the Trans-Mississippi West, 1820-1850" (Ph.D. diss., University of California Berkeley, 1995); Glenda Riley, *Women and Indians on the Frontier, 1825-1915* (Albuquerque: University of New Mexico Press, 1984); William R. Swagerty, "Marriage and Settlement Patterns of Rocky Mountain Trappers and Traders," *Western Historical Quarterly* 11 (April 1980): 159-80; Walter O'Meara, *Daughters of the Country: The Women of the Fur Traders and Mountain Men* (New York: Harcourt, Brace & World, Inc., 1968); and Lewis O. Saum, *The Fur Trader and the Indian* (Seattle: University of Washington Press, 1965).

"one of the most shocking cases of miscegenation" in the city's history.[47] The family may well have lived in substandard housing conditions, but it seems clear that in this case the activation of the state's coercive power over family life was triggered in large part by the mixed-race nature of the relationship.



HOWARD IS FOUND GUILTY

His Marriage To Ella Howarth Null and Void.

The Jury Decides That the Woman Is White and the Negro Is Black —Twenty Days is the Sentence.

This headline is from the* Ogden Standard*, March 12, 1898.

Another remarkable case occurred in Ogden in 1898. For several days police had suspected William Howard, an African American waiter, of living with a German girl named Ella Howarth. Detectives appeared at their door after midnight and discovered them together, but Howard immediately produced a marriage certificate proving that they had wed the previous Friday evening. He insisted that Howarth was "part negro," which would have made the union legal, but the police refused to believe that "a blonde" who looked "as little like a person part negro as one could imagine" was in fact mixed race, and they arrested the couple a few days later. Prosecutors sought to prove that the marriage was invalidated as a case of miscegenation and that the couple was thus guilty of fornication. The day before the trial, Howarth cracked and "confessed" to the county attorney that she was in fact "white." Charges were dropped against her, but were pursued against Howard. The trial's key moment came when Howarth took the stand and testified "as to her nativity, and that she was not of negro blood." After only five minutes of deliberations, the jury returned with a guilty verdict, and William Howard was sentenced to twenty days in prison.[48]

Paralleling the Quong Wah and Dora Harris episode that would occur later that same year, this case found the state actively engaged in defining the boundaries of race, and in determining who would be placed in each respective racial category. Physical appearance trumped Howarth's original claim of mixed ancestry, as investigators believed they could "see" her "true" racial composition. Miscegenation law thus became the arena for the construction of racial and gender identities. Ella Howarth's pure white womanhood was fashioned by means of a confession exacted under duress and then legitimated by dropping charges against her. William Howard's deviant male blackness, on the other hand, was reified and criminalized by charging and ultimately convicting him—not her—of miscegenation and

[47] *(Logan) Utah Journal*, May 22, 1889.
[48] *The (Ogden) Standard*, February 6, March 12, 1898.

fornication. That the case was publicized in the newspapers further reinforced the community's commitment to certain constructions of racial identities and gender roles, as legislated by Utah's anti-miscegenation statute.

American nationalism, imperialism, xenophobia, and racism peaked in the decades following the 1888 marriage law. The late nineteenth and early twentieth centuries marked an era of scientific race-typing and the legalized restriction of immigration. Numerous scientists and authors helped shape popular ideologies of the superiority of northern European (particularly Anglo-Saxon) stock and railed against the evils of miscegenation, thus reinforcing the bans on interracial marriage that most states had adopted by 1900. A representative and widely influential synthesis of this nativist and eugenicist ideology appeared in Madison Grant's *The Passing of the Great Race*, which asserted the primacy of "Nordics" over other racial and ethnic groups. Extremely popular (originally published in 1916, the book went through four editions by 1923), *The Passing of the Great Race* made apocalyptic predictions of Nordic "race suicide," a combined result of miscegenation with "lower" races and decreasing birthrates among pure Nordics. According to Grant, Nordics with their superior intellect and technology would never lose out to the lesser races on the field of battle, but if they allowed themselves to "mix with inferior strains or die out through race suicide, then the citadel of civilization will fall for mere lack of defenders." He concluded that "The laws against miscegenation must be greatly extended if the higher races are to be maintained."[49]

The increased momentum of scientific racism and eugenics, with their strong hostility toward miscegenation, helped inspire new prohibitory legislation in several western states. For instance, Wyoming, which had repealed its original anti-miscegenation statute in 1882 after only thirteen years on the books, passed a new law in 1913 that prohibited whites from marrying "Negroes" or "Orientals." Wyoming's 1869 statute has been interpreted as a means of preserving the sparse population of white females for white men instead of non-white workers, but by the early twentieth century the number of non-whites in the state was insubstantial and did not represent significant competition for white brides, and so the 1913 law can be explained as a result of the racial prejudice and xenophobia common to the era.[50] In another example, Arizona's anti-miscegenation law was amended in 1931 to prevent whites from marrying "Hindus, Malays, Negroes, Mongolians, and Indians," expanding upon the state's earlier 1865 and 1909 statutes. The Arizona law was twice challenged in court, in *Kirby v. Kirby* (1922) and *In re Monks' Estate* (1937). Both cases were essentially concerned with property rights, and in each case the deciding court (the Arizona

[49] Madison Grant, *The Passing of the Great Race*, 4th rev. ed. (New York: Charles Scribner's Sons, 1923), xxxi, 60. Grant later advised Congress in the national immigration debates and in the drafting of the 1924 immigration restriction bill.

[50] Roger D. Hardaway, "Prohibiting Interracial Marriage: Miscegenation Laws in Wyoming," *Annals of Wyoming* 52 (Spring 1980): 55–60.

Supreme Court in *Kirby*, the California state court of appeals in *Monks'*) made its ruling on grounds other than the miscegenation clauses themselves, thus tacitly upholding the constitutionality of Arizona's ban on interracial marriage.[51]

Utah was no exception to this upsurge in race theorizing and the attendant rise in discrimination in the period from the 1890s until World War II. The majority thinking among LDS church leaders, who still maintained significant cultural if not explicit political power in the state, paralleled national and regional trends. B. H. Roberts, president of the Southern States Mission in the 1880s and a prominent LDS theologian and ecclesiastical leader, wrote in a 1907 training manual that the South was justified in maintaining "at all hazards, and at all sacrifices an impassible social chasm between black and white. This she must do in behalf of her blood, her essence, of the stock of her Caucasian race." He went on to affirm the common notion that social equality among the races would lead to sexual relations and intermarriage between them, which meant that the "Caucasian would be irrevocably doomed." According to Roberts, "No other conceivable disaster," including "flood and fire, fever and famine and the sword," could "compare with such miscegenation."[52] The LDS church's so-called "Negro doctrine," which barred black men from being ordained to the priesthood until the policy was reversed in 1978, was further refined and defended during the early twentieth century, and in at least one instance the priesthood was denied to a white man who had married a black woman. Even when church leaders advocated equal civil and political rights for African Americans, they displayed what historian Lester Bush has called a consistent "aversion to miscegenation."[53]

Of course, discrimination went far beyond the LDS church and was prevalent within the broader social and political sphere. One poignant example came in 1939, when various real estate companies attempted to persuade lawmakers to create a segregated residential district for blacks in Salt Lake City, similar to other successful urban segregation movements that had taken place in numerous locales across America. The initiative failed

[51] See Hardaway, "Unlawful Love," 380-83, for a fuller treatment of these court cases.

[52] B. H. Roberts, *Seventy's Course in Theology* (Salt Lake City: Deseret News, 1907-1912), 1:165-66.

[53] Lester E. Bush Jr., "Mormonism's Negro Doctrine: An Historical Overview," in *Neither White nor Black: Mormon Scholars Confront the Race Issue in a Universal Church*, ed. Bush and Armand L. Mauss (Midvale: Signature Books, 1984), 89; see pp. 78-79 for the specific case cited here. For instance, in a 1946 article to the young women of the LDS church, J. Reuben Clark, a member of the First Presidency, instructed, "Now, you should hate nobody; you should give to every man and every woman, no matter what the color of his and her skin may be, full civil rights. You should treat them as brothers and sisters, but do not ever let that wicked virus get into your systems that brotherhood either permits or entitles you to mix races which are inconsistent. Biologically, it is wrong; spiritually, it is wrong." J. Reuben Clark, Jr., "Plain Talk to Girls," *Improvement Era* 49 (August 1946): 492.

In June 1978, LDS church leaders announced that "all worthy male members of the Church may be ordained to the priesthood without regard for race or color," thus overturning the policy that had stood for over a century. "Official Declaration—2," *The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints* (Salt Lake City: The Church of Jesus Christ of Latter-day Saints, 1981), 293-94.

largely because of the determined activism of African American women who sat in on legislative sessions and made their protests public through the newspapers.[54] In short, a distinctive racial hierarchy was evident in virtually all aspects of Utah society just as it was throughout the rest of the nation.[55]

Following the pattern in other western states and in accordance to the racial climate of the early decades of the twentieth century, Utah passed a more specific and restrictive amendment to its miscegenation law. In 1939 three state senators introduced a bill to amend the statute "relating to prohibited and void marriages." The bill kept all previous aspects of the state's marriage law, but added several classes of people to those deemed unfit to marry, including anyone with a live case of syphilis or gonorrhea, and anyone subject to chronic epilepsy (unless they had been sterilized). The most significant change—underlined in the printed form of the working bill so as to add emphasis—was the revision of which racial groups would be excluded from intermarriage with whites. The law retained the earlier restrictions on those who were "negro" or "Mongolian," but now also stipulated that marriage was prohibited between a "member of the malay race or a mulatto, quadroon, or octoroon, and a white person." The bill went through both legislative houses quickly and was adopted with virtually no opposition, finally passing by votes of 44-1 (fifteen absent) in the House and 20-2 (one absent) in the Senate.[56]

The overwhelming support for the bill is revealing. As opposed to the original 1888 bill, in which miscegenation seems to have been something of an afterthought in the process of defining acceptable marriage practices and eradicating polygamy, the primary purpose of the 1939 law was to tighten restrictions on the permissibility of non-white groups to marry whites. Despite a tiny non-white population—racial minorities never constituted more than 1.8 percent of the total Utah state population from 1900 to 1940, and their total actually decreased in absolute numbers and percentage from 1930 to 1940—the state legislature felt the issue of miscegenation to be important enough to amend the existing law and

[54] Oral histories remembering the event include interviews of Lucille Bankhead and Albert Fritz, respectively, in Leslie G. Kelen and Eileen Hallet Stone, eds., *Missing Stories: An Oral History of Ethnic and Minority Groups in Utah* (Salt Lake City: University of Utah Press, 1996), 73-77, 101-06. Earlier attempts to create a segregated zone for Chinese immigrants also failed in 1874 and 1882; see Lansing, "Race, Space, and Chinese Life," 223.

[55] See F. Ross Peterson, "'Blindside': Utah on the Eve of *Brown v. Board of Education*," *Utah Historical Quarterly* 73 (Winter 2005): 4-20.

[56] "An Act Amending Section 40-1-2, Revised Statutes of Utah, 1933, Relating to Prohibited and Void Marriages," S.B. No. 65, Senate Working Bills, Utah State Archives, Series 428, Box 22, Folder 31. Also see *Senate Journal, Twenty-Third Session of the Legislature of the State of Utah, 1939* (Salt Lake City: Seagull Press, 1939); and *Journal of the House of Representatives of the State of Utah, Twenty-Third Session of the Legislature* (Salt Lake City: Stevens & Wallis, Inc., 1939).

"Mulatto" was a flexible term, often meaning any person in whom any mixture of white and black was evident. It was also used in a more specific sense, as is the case here, of a person who was half black and half white. A "quadroon" is one-quarter black, and an "octoroon" one-eighth black. See Williamson, *New People*, xii.

further define and restrict interracial marriages.[57] The law cannot be explained, therefore, as a reaction to a large in-migration of racial and ethnic minorities or even a rise in their relative strength vis-à-vis the local white population.

Without specific demographic shifts to respond to, Utah legislators simply seem to have been acting in harmony with the prevailing racial thinking of the day, which had also inspired other western states to expand their miscegenation legislation. No longer satisfied with the crude demarcations of "white," "negro," and "Mongolian," Utahns adopted new categories that made their miscegenation law simultaneously more expansive and more precise. In "malay," they found a term that solved the problem of whether or not Filipinos classified as "Mongolians." The issue had arisen just a few years earlier in California, where a judge had ruled in 1933 that Filipinos were not part of the "Mongolian race," thereby qualifying them to marry whites; in response the California state legislature immediately amended their miscegenation statute, adding "Malays" to the list of groups restricted from intermarriage with whites. Only five other states besides Utah listed "Malays" as a prohibited group, but significantly, four of the five (California, Nevada, Arizona, and Wyoming) were immediate or close neighbors.[58] The restriction on "Malays" was not a result of a wave of immigration—to the contrary, Filipinos were barred from immigrating to America from 1934 to 1946—but rather an attempt to shore up legal definitions of racial otherness and by extension protect whiteness from intermixture with non-white groups. This development was similar to the 1888 restriction on marriage with "Mongolians" paralleling federal Chinese exclusion legislation in the 1880s.

The 1939 amendment also defined and delimited the extent of transgressive blackness, making it clear that mixed-race individuals or those with any African American ancestry to the fourth generation—mulattoes, quadroons, and octoroons—fell outside the boundaries of acceptable marriage partners for whites. Using such specific language eliminated the murky question of how much blackness made someone black. Rather than relying on unavoidably subjective judgments of skin tone, the new law circumvented physiology by appealing to genealogy, thus reinforcing a biological construction of race that prevailed in popular, legal, religious, and academic circles until well past mid-century. Significantly, the amendment did not go so far as to implement the "one-drop rule," thus technically allowing for a person with a remote African American ancestor to still

[57] Statistical information from *Sixteenth Census of the United States: 1940*, Vol. 2, *Characteristics of the Population*, Part 7, *Utah-Wyoming* (Washington, D.C.: Government Printing Office, 1943), 14. In 1930, of a total population of 507,847, blacks numbered 1,108 in Utah, Indians 2,869, Chinese 342, Japanese 3,269, and "all other" races 292. By 1940, with the total population increasing to 550,310, the number of blacks had risen to 1,235 and Indians to 3,611, but the number of Chinese decreased to 228, Japanese to 2,210, and "all others" to 106.

[58] See Pascoe, "Race, Gender, and Intercultural Relations," 74, 79 n. 20.

qualify as white and preserving the possibility that the putative stain of possessing a distant black ancestor could be subsumed by generations of whiteness. This contrasted with the example of Virginia's 1924 "Act to Preserve Racial Integrity," which defined a "white person" as someone "who has no trace whatsoever of any blood other than Caucasian."[59] Pragmatically, however, in 1939 the categories of "negro," "mulatto," "quadroon," and "octoroon" cast a wide enough net to catch virtually anyone suspected of being black, and provided a precise definition even for some of those whose physical characteristics would otherwise allow them to pass for white. In specifically defining which racial groups were unfit for intermarriage with whites, the law therefore constructed the bounds of acceptable whiteness. The lawmakers who overwhelmingly passed the 1939 amendment to Utah's miscegenation law revealed existing public sentiments about racial distinctiveness and white superiority and then codified those sentiments into law, thus hardening racial hierarchy and reinforcing the attitudes that originally inspired discriminatory legislation.

The post-World War II era saw the slow and steady dismantling of Jim Crow and its web of racially discriminatory law. While the struggle for desegregation and political rights garnered most of the national media headlines, a relatively quiet battle was being waged in legislatures and courthouses around the country to put to rest the three-century-old life of America's anti-miscegenation legislation. This effort was ultimately rewarded in June 1967, when the Supreme Court ruled in *Loving v. Virginia* that state laws prohibiting interracial marriage were universally unconstitutional. The decision in *Loving* was not a spontaneous revolution in judicial policy, but rather the culmination of years of other precedent-setting rulings, during which time many states, including Utah, voluntarily repealed their anti-miscegenation statutes. The first significant legal victory came in 1948, when the California Supreme Court, in the landmark case *Perez v. Sharp*, struck down the state's prohibition of interracial marriage as a violation of equal protection under the law. The historic *Perez* ruling, and the quickening pace of the larger civil rights movement, opened the door for statutes prohibiting interracial marriage and sexual relations to be reexamined. In *McLaughlin v. Florida* (1964), the U.S. Supreme Court struck down one state's law banning extramarital interracial sex. In the meantime, most states, particularly in the West, saw the writing on the wall and repealed their laws banning interracial marriage before the federal judiciary did it for them. Enough progress had been made to change laws at the state level that by the time the Court ruled in *Loving* in 1967, the decision nullified existing law in only sixteen states, primarily in the South; all states in the Intermountain and Pacific West had already repealed their miscegenation

[59] In a classic expression of the "Pocahontas rule," anyone who had "one-sixteenth or less of the blood of the American Indian and have no other non-caucasic blood" was also considered white. Reprinted in Werner Sollors, *Interracialism: Black-White Intermarriage in American History, Literature, and Law* (New York: Oxford University Press, 2000), 23-24.

legislation on their own accord.[60]

The constitutionality of Utah's anti-miscegenation law nearly went uncontested until its repeal in 1963. The only formal challenge to the miscegenation clause in the state's marriage statute was *Thomas v. Children's Aid Society of Ogden*, which reached the state supreme court in 1961. The case revolved around a child born in April 1959 to unwed parents James Thomas, an African American man, and Kathleen McMurtrey, a white woman. Following the recommendation of her parents and an obstetrician, McMurtrey released her newborn baby to a licensed child placement agency. Thomas and McMurtrey resumed their relationship shortly after she had given up the child, and they were married in June 1959 in Idaho—where the law prohibiting interracial marriage had just been repealed—despite the fact that Thomas was still legally married to another woman whom he had wed three years earlier (their divorce did not go through until 1960). Upon their return to Utah, the newlyweds twice demanded the return of their child and were refused on both occasions, at which point they took the child placement agency to court. The Utah Supreme Court decided that the placement of the child was legally valid, and that the marriage between Thomas and McMurtrey was void, not because of miscegenation but due to Thomas' existing marriage. Since the ruling was made on other grounds, the court deemed it unnecessary to call into question the constitutionality of Utah's miscegenation statute, which the plaintiffs had contested, thus effectively sidestepping the issue.[61]

Never definitively ruled on by the courts, Utah's anti-miscegenation statute remained solidly in place until the state legislature addressed the issue in the 1963 session. As such, Utah represented the second-to-last state in the West (next to Wyoming in 1965) to repeal its miscegenation law freely. The bill, which struck out all racial restrictions in the state marriage code, passed with strong majorities in both houses of the state legislature, but not without debate.[62] Some legislators were strongly in favor of the act

[60] *Perez v. Sharp*, California Supreme Court, 32 Cal. 2d 711, 198 P.2d 17 (1948); *McLaughlin v. Florida*, 379 U.S. 184 (1964); *Loving v. Virginia*, 388 U.S. 1 (1967). For a concise overview of the constitutional attack on anti-miscegenation laws, see Kennedy, *Interracial Intimacies*, 259-78. Oklahoma and Texas were the only two western states to have their miscegenation laws nullified by the *Loving* decision. See Pascoe, "Race, Gender, and Intercultural Relations," 79 n. 21. The only states to have never passed anti-miscegenation legislation were Alaska, Connecticut, the District of Columbia, Hawaii, Minnesota, New Hampshire, New Jersey, Vermont, and Wisconsin. See Kennedy, *Interracial Intimacies*, 219.

[61] *Thomas v. Children's Aid Society of Ogden*, Supreme Court of Utah, 12 Utah 2d 235; 364 P.2d 1029 (1961). Two other cases, both involving disputes over inheritance, challenged the state's marriage code, but did not specifically target the miscegenation clauses. See *Sharp v. Seventh Judicial District Court of State of Utah*, 81 Utah 236, 17 P.2d 261 (1932); and *In re Vetas' Estate*, 110 Utah 187, 170 P.2d 183 (1946).

[62] The bill, introduced as Senate Bill No. 80, "An Act Relating to Prohibiting Marriages Amending Section 30-1-2, Utah Code Annotated 1953, Removing Certain Racial Restrictions from Marriages," passed 17-7 (1 absent) in the Senate, 52-6 (6 absent) as amended in the House, and 22-0 (3 absent) in the Senate after amendment. See *Senate Journal, Thirty-Fifth Session of the Legislature of the State of Utah, 1963* (Salt Lake City: Mercury Publishing Co., 1963); and *Journal of the House of Representatives of the State of Utah, Thirty-Fifth Session of the Legislature* (Salt Lake City: Lorraine Press, 1963). The final version is in "Inter-Racial Marriages," *Laws of the State of Utah, 1963*, chap. 43 (1963), 163.

as a civil rights issue—one representative asserted that the bill was "based upon the Bill of Rights" and in line with recent federal civil rights legislation. Others saw the issue in more pragmatic terms, acknowledging that the Supreme Court was soon likely to strike down anti-miscegenation laws and so the state legislature might as well act before being acted upon. Another representative thought there were some unspecified "legal problems" potentially associated with the bill, but recommended passage based on the fact that it would be more inclusive of Asians in Utah society (he conspicuously omitted any mention of African Americans).[63]

Equally interesting were the sentiments opposing the bill as expressed by one Republican representative, clearly a proud descendant of the state's Mormon pioneers. He wanted to assure his fellow legislators that racism had nothing to do with his opposition, noting that a "colored man holding the priesthood" had entered the Salt Lake Valley in the first pioneer company with Brigham Young, and that his father had played football with "colored" people in school. He claimed, however, that it was misguided to try to achieve racial equality via intermarriage. Besides, he said, "these people" were already accepted as full equals in society, and in Utah "we really have no problem" with race (except on the issue of intermarriage). He closed with an appeal to maintain racial purity so as to not extend further the "curse" associated with the LDS priesthood ban, declaring, "I would not want to sell my heritage or the heritage of any of my posterity and have grandchildren or great-grandchildren who would not be entitled to the blessings and privileges which you are entitled to."[64]

The religious logic of this representative's opposition to intermarriage obviously failed to persuade a great number of his fellow members of the House, but it does reveal the way in which religious beliefs can influence political ideology on an individual and potentially public level. His broader argument, that racial equality had already essentially been achieved and that harmony between the races prevailed, was typical of the moderate white response to civil rights issues in the early 1960s. Many whites, who considered themselves moderate and even progressive, were willing to extend full civil and political rights to African Americans, but wanted to stop short of legalizing intermarriage and thus racial "amalgamation," drawing the line before establishing free and equal sexual relations between the races.[65] In

[63] House Floor Debate Recordings, Utah State Legislature, March 13, 1963 (audio recording), Series 596, Box 1, Utah State Archives.

[64] Ibid. In the recording the speaker is referred to as "Representative Smith." There were two Smiths—J. McKinnon and S. Albert—in the House, both of whom voted against the bill, so it is unclear which man gave these remarks. For a contemporaneous statement echoing similar sentiments in print, see John Lewis Lund, *The Church and the Negro: A Discussion of Mormons, Negroes and the Priesthood* (n.p., 1967), 110.

[65] According to Gallup polls, 94 percent of whites disapproved of white-black interracial marriage in 1958 (versus 70 percent approval in 2003). Only 42 percent of whites in 1963 thought that black civil rights groups were asking for "too much," while 57 percent thought they were asking for "just about what they should be asking for." *The Gallup Organization for AARP: Civil Rights and Race Relations* (Princeton, NJ: The Gallup Organization, 2004), 26, 70-71.

the end, those who sought to keep sexual intimacy separate from equal rights failed, beginning with state court decisions such as *Perez v. Sharp*, continuing with legislative action such as the 1963 repeal of Utah's seventy-five year ban on interracial marriage, and culminating in 1967 with the Supreme Court's decision in *Loving v. Virginia*.

THE PEOPLES OF UTAH COLLECTION, UTAH STATE HISTORICAL SOCIETY

The Komer Tawatari family came to Utah in 1913 and established their home in Corinne.

Interracial marriage represented one of the first distinctions made in the legal construction of race in colonial America, and was one of the last major battles won in the courts during the civil rights era. In a very real sense, opponents of full racial equality since the nineteenth century were correct in predicting that political equality would lead to social equality, which would ultimately culminate in miscegenation. The rates of interracial marriage have risen significantly since 1967 and it has become more of a fixture in American society, although same-race marriages still far outnumber mixed-race unions.[66] New debates over the nature and definition of marriage have arisen, with old arguments often employed in the service of present issues.

The history of Utah's anti-miscegenation statute provides insight into how social policy and legislation are shaped by a complex interaction of factors ranging from the local to the regional and national, and including such issues as politics, demographics, race, gender, and religion. Greater historical perspective on the power of the state in regulating private contracts such as marriage will perhaps afford us an increased share of wisdom in our contemporary deliberations.

[66] The number of black-white mixed marriages in the United States increased more than six-fold between 1960 and 2000, from approximately 51,000 to 330,000; of the latter number, 210,000 (64 percent) involved black husbands and white wives. Despite the increase, black-white marriages still account for only 0.6 percent of total marriages in the U.S., and over 93 percent of whites and blacks marry within their own groups. See Kennedy, *Interracial Intimacies*, 126-27.